

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

SEGONE, INC.,

Plaintiff,

v.

FOX BROADCASTING COMPANY,

Defendant.

Civil Action No. 3:07cv342-JRS

**RESPONSE TO DEFENDANT’S REPLY MEMORANDUM
IN SUPPORT OF ITS MOTION TO DISMISS**

Please note that Defendant Fox Broadcasting Company filed its Reply Memorandum In Support Of Its Motion To Dismiss two days beyond the time allowed under the Eastern District’s local rules, and it also failed to file (as required by those rules) a motion requesting that this Court grant it additional time. Previous to this late filing, on Wednesday, August 8, counsel for Fox contacted counsel for Plaintiff segOne, Christopher Sprigman, to request segOne’s support for a motion by Fox requesting additional time to file its reply. Mr. Sprigman stated that segOne would neither support nor oppose such a request, and that Fox could say as much in any motion that it filed requesting extra time.¹

Therefore, because segOne has already told Fox’s counsel that it would not oppose extra time for the filing of the Reply Memorandum, segOne takes no position whether this Court should strike the Reply on account of its lateness.

Fox’s late-filed Reply also makes much of Judge Batts’s ruling on the Copyright Act’s “homestyle exemption”—a matter that Fox did not address in the Argument supporting its

¹ Note also that Fox sought, and was granted (again, with no objection from segOne), extra time to file its initial motion and accompanying memorandum.

motion to dismiss (and that segOne accordingly did not address in its Argument in opposition).

While Fox and its co-plaintiffs in the *Flying J* litigation did raise the homestyle exemption in that case, it is entirely irrelevant to segOne's arguments in the present suit before this Court. segOne will not raise the issue of the homestyle exemption in this declaratory action and will not seek any ruling from this Court on its applicability to any use of the segOne device. Fox's assertions in its Reply Memorandum that segOne is asking this Court to disagree with the New York court's conclusions on the scope of the homestyle exemption are therefore simply incorrect.

Respectfully submitted,

segOne, Inc.

By: /s/

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Dated: August 20, 2007

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of August, 2007, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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